

# Exhibit A

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF OHIO  
3 WESTERN DIVISION AT CINCINNATI  
4

5 - - -  
6 WALTER W. THIEMANN, on :  
7 behalf of himself and :  
8 of all others similarly :  
9 situated, :

10 Plaintiff, :

11 VS. :

CASE NO. C-1-00793

12 OHSL FINANCIAL CORP., :  
13 OAK HILLS SAVINGS AND :  
14 LOAN COMPANY, F.A., :  
15 NORBERT G. BRINKER, :  
16 KENNETH L. HANAUER, :  
17 WILLIAM R. HILLEBRAND, :  
18 ALVIN E. HUCKE, THOMAS :  
19 E. MCKIERNAN, JOSEPH J. :  
20 TENOEVER, HOWARD N. :  
21 ZOELLNER, PROVIDENT :  
22 FINANCIAL GROUP, INC., :  
23 ROBERT L. HOVERSON, :  
24 JACK M. COOK, THOMAS D. :  
GROTE, JR., PHILIP R. :  
MYERS, JOSEPH A. PEDOTO, :  
JOSEPH A. STEGER, :  
CHRISTOPHER J. CAREY, :  
CLIFFORD ROE, and :  
DINSMORE & SHOHL, LLP, :

Defendants. :

22 - - -  
23 Hearing held before Magistrate Judge  
24 Hogan taken by me, Lee Ann Williams, a

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1 Registered Professional Reporter and Notary  
2 Public in and for the State of Ohio, on  
3 Tuesday, August 3, 2004, at 10:00 a.m.

## APPEARANCES:

## On behalf of the Plaintiffs:

6 Michael G. Brautigam, Esq.  
7 Gene Mesh & Associates  
8 2605 Burnet Avenue  
9 Cincinnati, Ohio 45219

## On behalf of the Defendants:

10 James Burke, Esq.  
11 Keating, Muething & Klekamp  
12 1400 Provident Tower  
13 One East Fourth Street  
Cincinnati, Ohio 45202

## On behalf of the Defendants:

14 James Greer, Esq.  
15 Bieser Greer Landis  
16 400 National City Center  
17 Six North Main Street  
Dayton, Ohio 45402

## On behalf of the Defendants:

18 John W. Hust, Esq.  
19 Schroeder, Maundrell, Barbiero  
20 & Powers  
21 110 Governor's Knoll  
22 11935 Mason Road  
23 Cincinnati, Ohio 45249  
24

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1 MR. BARRETT: Your Honor, Tom and  
2 I are here on behalf of the KMK defendants who  
3 were previously dismissed from the case, but we  
4 wanted to appear today in the event that there  
5 were discovery issues that were brought to the  
6 Court's attention.

7 I don't think there have to be,  
8 because appropriate filings can be made and  
9 handled that way, but in case there were  
10 comments that needed to be addressed, we are  
11 here and would request the Court's permission  
12 to stay in the conference in that regard.

13 MAGISTRATE JUDGE HOGAN: Okay.

14 What's up, I guess, is --

15 MR. BRAUTIGAM: Your Honor, first  
16 of all --

17 MAGISTRATE JUDGE HOGAN: You  
18 wanted the conference, so you're on top of  
19 what's happening.

20 MR. BRAUTIGAM: Well, I'm trying  
21 to be, Your Honor. First of all, I'd like to  
22 say that Mr. Mesh is feeling under the weather  
23 today. I spoke to him this morning and he  
24 chose not to come to the status conference.

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## On behalf of the Defendants:

2 Michael R. Barrett, Esq.  
3 and  
4 Thomas William Breidenstein, Esq.  
5 Barrett & Weber  
6 Suite 500  
105 East Fourth Street  
Cincinnati, Ohio 45202

ALSO PRESENT: Linda Smith

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1 There was some talk about his calling in, but I  
2 believe he's going to the doctor and that's why  
3 he's not here. He sends his regards.

4 Your Honor, I do have a little bit  
5 of a briefing, and I'd like to start with  
6 something from the Bieser Greer web site and it  
7 says, "never mistake motion with action." And  
8 there's been a lot of motion in the past month,  
9 but there's been no action.

10 Really since we met before you on  
11 June 30th, essentially nothing has been done.  
12 A lot of papers have been filed, but nothing of  
13 substance has happened. And we appreciate your  
14 taking the time to meet with us to see if some  
15 of these things can be resolved.

16 Now, one of the points I have is  
17 that your order, document number 349, allowed  
18 for additional time with some of the individual  
19 Provident defendants. These depositions have  
20 not yet been set up. And I understand that Mr.  
21 Carey has now moved to California. And we  
22 believe that KMK should pay for our travel  
23 expenses to California, because last time when  
24 we were here, they knew of his imminent move

2 (Pages 2 to 5)

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1 and they didn't say anything about it until  
2 much later when we couldn't take his deposition  
3 before he left. So that's an issue.

4 MR. BURKE: If I can respond to  
5 that -- or do you want to go seriatim?

6 MR. BRAUTIGAM: Why don't you  
7 respond?

8 MR. BURKE: We're prepared to make  
9 Mr. Carey available. It's an additional hour,  
10 so I don't think anybody should be flying to  
11 California. We have video conferencing at our  
12 office, we've offered to do that or to make him  
13 available by phone.

14 I have already told Mr. Brautigam  
15 that we're going to make Mr. Carey available  
16 for the additional hour that he's entitled to.  
17 When parties shift costs, it's usually between  
18 plaintiffs and defense, and KMK is no longer a  
19 defendant. But in any event, we're certainly  
20 willing to make Mr. Carey available, but I  
21 don't believe that anybody should fly to the  
22 west coast for one hour.

23 MR. BRAUTIGAM: Well, Your Honor,  
24 we respectfully disagree. Also --

1 MR. BRAUTIGAM: Your Honor, I've  
2 been involved in videotaped depositions and  
3 it's my belief that it would be more effective  
4 to take it in person.

5 MR. BURKE: I think if that's his  
6 preference, Your Honor, I don't see that  
7 there's any strategic disadvantage. If that's  
8 his preference, he can fly out there on his own  
9 nickel, I don't know why we should pay for it.  
10 If he doesn't like video conference, he can do  
11 it by phone.

12 MR. BARRETT: Your Honor, since  
13 we've been asked to pay for it, I would add  
14 that this is a continuation, it's not an  
15 initial deposition, so --

16 MAGISTRATE JUDGE HOGAN: The only  
17 issue I can think of that makes it a little  
18 cumbersome is document identification, which in  
19 the case of a video conference, the documents  
20 that you want Mr. Carey to look at or review  
21 could be sent to him in advance so that he has  
22 them. Other than that, I can't imagine what  
23 the issue is, really, unless you can be more  
24 specific. How are you disadvantaged by that

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1 MAGISTRATE JUDGE HOGAN: Why?  
2 MR. BRAUTIGAM: Because we believe  
3 that the deposition should be done in person.  
4 And also there's the issue of the PWC report,  
5 Your Honor.

6 MR. BURKE: Wait, let's deal with  
7 Mr. Carey first.

8 MR. BRAUTIGAM: It relates to Mr.  
9 Carey.

10 MR. BURKE: Okay.

11 MR. BRAUTIGAM: Your Honor, you  
12 provided for an additional hour for Mr. Carey.  
13 We'd like to accept that offer and we feel that  
14 KMK as defense counsel was remiss in not  
15 telling us at the last time, hey, you only have  
16 a couple of days to do that if you want to do  
17 it in Cincinnati, he's moving to California.

18 MR. BURKE: No, Mr. Carey was not  
19 available prior to the time he left.

20 MAGISTRATE JUDGE HOGAN: Is there  
21 a certain advantage that I'm not aware of to  
22 conducting a deposition in person versus video  
23 transmission that somehow prejudices the  
24 plaintiff?

1 kind of a process?

2 MR. BRAUTIGAM: Your Honor, I  
3 believe that Mr. Carey is going to take this  
4 last hour and attempt to run out the clock.  
5 And it's much harder to do this on video. I  
6 have participated in these things with mixed  
7 results.

8 I think that it's fair that I take  
9 his deposition in person. And this also  
10 triggers the issue of the PWC report, and I  
11 respectfully submit that it's related.

12 Your Honor, last time we were  
13 here, KMK said that they would make a decision  
14 on whether or not the PWC report was work  
15 product in two days. They didn't do that, they  
16 sent me a letter saying we need some more time.  
17 They missed their next deadline, but ultimately  
18 they did decide to turn it over to us and they  
19 produced it to us by hand delivery on July  
20 16th.

21 Your Honor, this raises serious  
22 questions as to why this wasn't produced a year  
23 ago and why plaintiffs should not be able to  
24 take the deposition of all of the Provident

3 (Pages 6 to 9)

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1 directors with this document. This is a key  
2 document.  
3 There's no legal reason why this  
4 wasn't turned over a year ago, why it's turned  
5 over now when I'm effectively prevented or  
6 limited from taking their depositions. And,  
7 Your Honor, I guess we would like some guidance  
8 on now to proceed. Do you want papers?

9 I've made a copy for you if you'd  
10 like this for an in camera review, but this is  
11 a crucial document that was produced late  
12 through no fault of our own. We asked for this  
13 a year ago. We didn't get it until July 16th,  
14 just a couple of weeks ago.

15 And there's no reason why we  
16 should be prevented from taking the depositions  
17 of all of the Provident directors with respect  
18 to this document.

19 MR. BURKE: You did not ask for it  
20 a year ago, Mr. Brautigam. You asked for it  
21 recently. We still maintain that we believe  
22 that it's work product, okay? We believe that  
23 that's a viable position. In order to avoid  
24 inconveniencing the Court any further with this

1 Carey's deposition by video conference. And  
2 you can send to him the exhibits you want him  
3 to identify and -- or discuss. And I think  
4 it's just jerking people around to make the guy  
5 either fly here or anybody fly out there. So  
6 video conference deposition of Mr. Carey.

7 MR. BRAUTIGAM: Your Honor, just  
8 to clarify, if I want to fly to California, I'm  
9 not prevented from doing it?

10 MAGISTRATE JUDGE HOGAN: You're  
11 welcome to do it.

12 MR. BRAUTIGAM: And, Your Honor,  
13 this is the PWC report.

14 MAGISTRATE JUDGE HOGAN: And we  
15 can decide that by -- what's today, the 3rd?

16 MR. BRAUTIGAM: Yes, Your Honor.

17 MAGISTRATE JUDGE HOGAN: Okay. By  
18 5:00 today.

19 MR. BRAUTIGAM: Your Honor, also  
20 attached to that is the stipulated protective  
21 order, document number 51.

22 MAGISTRATE JUDGE HOGAN: Okay.

23 What's next?

24 MR. BRAUTIGAM: Your Honor, I

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1 nonsense, we went forward and over some strong  
2 objections produced the report.

3 You've objected to our designation  
4 of it as confidential, that's already been  
5 filed with the Court. But it has been  
6 produced, you got the document, and as far as  
7 I'm concerned, you've got Mr. Carey for an  
8 hour, you've got Mr. Hoverson for an hour.  
9 You're free to take the deposition and to  
10 question them about the document. It's not  
11 even their document.

12 MAGISTRATE JUDGE HOGAN: Okay. I  
13 can decide one of these right now. I'd like to  
14 look at that, Mike, if you can leave a copy of  
15 that.

16 MR. BRAUTIGAM: Yes, Your Honor,  
17 this is for you.

18 MAGISTRATE JUDGE HOGAN: And we  
19 can decide this before 5:00 tonight, okay?

20 MR. BURKE: That's fine, Your  
21 Honor.

22 MAGISTRATE JUDGE HOGAN: That's  
23 the second issue. But as to the first, I don't  
24 see any arguable reason why you can't take Mr.

1 wanted to remind the Court and all parties that  
2 document 221, the existing scheduling order, is  
3 just no longer workable. It says, as we all  
4 know, that the Court's decision on the motion  
5 to dismiss was due on April 30th, 2004. As we  
6 also know, that hasn't happened and plaintiffs  
7 are prejudiced. So there's a continual problem  
8 due to the scheduling order not working.

9 And here's how the problem  
10 unfolds. Last time, you may remember, KMK --  
11 excuse me, Ernst & Young objected to any type  
12 of discovery going forward that could impact  
13 them unless and until the motions to dismiss  
14 had been decided. You have ruled on that.

15 I then called counsel for Ernst &  
16 Young, worked together in a cooperative manner,  
17 set some things up. Unfortunately, the  
18 gentleman I sought to depose had moved out of  
19 town and he had a heart attack. So for medical  
20 reasons, he's not able to be deposed right now,  
21 but I'm working with their counsel on that. We  
22 have a high degree of cooperation.

23 Regrettably, the same thing cannot  
24 be said for KMK. Even though you said -- and

4 (Pages 10 to 13)

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1 this is KMK as former parties and as witnesses  
2 in the case -- even though you said that  
3 discovery should proceed against them, they  
4 have thrown up every unreasonable hurdle, every  
5 road block to getting these depositions taken,  
6 and that seems to be their position throughout.

7 MR. BARRETT: May I respond to  
8 that, Judge?

9 MAGISTRATE JUDGE HOGAN: Sure.

10 MR. BARRETT: There has been  
11 communication between Mike and Tom from our  
12 office and I think some other members of the  
13 KMK firm. We in accordance with the Rules did  
14 send over to Mike our objections to his  
15 subpoena. We stated what our objections were.

16 The Court in its prior ruling I  
17 think indicated that all of the parties know  
18 how to formally get something in front of you  
19 for a hearing that has not been briefed. We do  
20 have some issues with how the depositions  
21 should be conducted, just because of things  
22 that have happened in the past.

23 We would like them to be organized  
24 and in certain time frames. We've been trying

1 And he says, we can't have these  
2 depositions go forward without a special master  
3 or we have to limit them in time or we're not  
4 going to produce any documents such as billing  
5 records. They're not going to produce  
6 anything. So, Your Honor, Mr. Fischer has  
7 moved for a protective order with respect to  
8 the subpoenas which, by the way, he forces me  
9 to do everything through subpoena. He's -- his  
10 positions are simply not consistent with the  
11 Rules, and we will respond.

12 There were some issues about some  
13 of the statements that were made in some of the  
14 filings. I understand Mr. Breidenstein is  
15 going to be amending one of the pleadings  
16 today. And that leads to another issue, Your  
17 Honor. There are so many papers, so many  
18 motions, cross motions, that we really need  
19 some type of a schedule to argue all this out.

20 Last May you met in chambers --  
21 excuse me, in open court with a reporter and we  
22 argued, I believe, five discovery motions at  
23 that time. I respectfully suggest that we do  
24 something similar this time, because with the

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1 to work with Mike on that. And frankly, with  
2 the filings that have been placed before the  
3 Court, they haven't been briefed, they haven't  
4 been responded to.

5 I'm not sure if this is the  
6 appropriate time to address those issues. And  
7 you had indicated before that the parties know  
8 how to get the matter before you. There has  
9 been communication back and forth, so I'm not  
10 quite sure I understand what the issue is.

11 MR. BRAUTIGAM: Well, Your Honor,  
12 let me see if I can explain it. As per  
13 document 221, there's an October 29th, 2004  
14 discovery deadline. These things take time.  
15 Once again, KMK through Pat Fischer and Mr.  
16 Barrett, essentially their entire strategy is  
17 to call me names.

18 There's a division here because  
19 Mr. Greer in document number 354 said, quote,  
20 given the questions asked by plaintiff's  
21 counsel, the depositions have proceeded  
22 remarkably free of serious conflict. And then  
23 Pat Fischer, shadow counsel, steps out of the  
24 shadows and writes me letters calling me names.

1 motions and the amended motions and -- they're  
2 very similar in many ways. This is really  
3 getting out of control.

4 MAGISTRATE JUDGE HOGAN: Is this  
5 briefed? This issue about the subpoenas and  
6 the protective order?

7 MR. BURKE: It is not, Your Honor.

8 MR. BRAUTIGAM: No, it is not,  
9 Your Honor. There are some things that are  
10 briefed, there are other things that are about  
11 to be briefed, but because they're going to  
12 amend the pleadings, I held back on filing.

13 I talked to Mr. Breidenstein about  
14 that this morning. I talked to Mr. Greer about  
15 a possible amended filing last night, so I  
16 don't know what the status is of some of these  
17 things, because I'm shooting at a moving  
18 target.

19 MAGISTRATE JUDGE HOGAN: Well, if  
20 you're requesting oral argument on fully  
21 briefed motions, that's fine. We will do that.

22 MR. BRAUTIGAM: Right. Well --

23 MAGISTRATE JUDGE HOGAN: But if  
24 they're not ready --

5 (Pages 14 to 17)



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1 MR. BRAUTIGAM: Right. In the  
2 next couple of weeks -- in the next week or  
3 two, Your Honor, I think they will be ready.  
4 And at that time if the Court could send out an  
5 order saying I think these discovery motions  
6 are ready, I'd like to have oral argument on  
7 this particular day, could the parties advise  
8 us as to what else is out there, if anything.

9 MR. BURKE: Maybe you'd rather do  
10 that. Why don't counsel do that, say the  
11 following motions are fully briefed and here  
12 are the documents. That's not the Court's  
13 responsibility to --

14 MR. BRAUTIGAM: We'll be happy to  
15 do that, Your Honor.

16 MAGISTRATE JUDGE HOGAN: The gist  
17 of it is, whatever is outstanding and you want  
18 a hearing on, we can put them together, reserve  
19 a time and do it.

20 MR. BURKE: You've just got to  
21 brief them.

22 MR. BRAUTIGAM: Right.

23 MAGISTRATE JUDGE HOGAN: What's  
24 next?

1 MR. BURKE: I think that's the  
2 agreement of the parties.

3 MR. BRAUTIGAM: Right, but it's  
4 not reflected in the order and that concerned  
5 me.

6 MR. BURKE: I think, Your Honor,  
7 it just inadvertently stated plaintiff's  
8 experts by August 30 when the clear agreement  
9 of everyone is plaintiff's on August 30th and  
10 defense on September 30th.

11 MR. BRAUTIGAM: That's agreed, but  
12 that's not what's stated in the order, it's  
13 identification of expert witnesses.

14 MR. BURKE: We'll clean it up.  
15 But the agreement of all is identification of  
16 experts and reports by plaintiff's experts on  
17 August 30th, identification of defense experts  
18 and expert reports by September 30th. That's  
19 our understanding.

20 MR. BRAUTIGAM: All right.

21 MAGISTRATE JUDGE HOGAN: No  
22 problem.

23 MR. BRAUTIGAM: Your Honor, also  
24 you talked about the deposition of Tayfun

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1 MR. BRAUTIGAM: I just wanted to  
2 ask for oral argument on that.

3 MAGISTRATE JUDGE HOGAN: Okay.  
4 Granted.

5 MR. BRAUTIGAM: Thank you.

6 MR. BURKE: Stipulated.

7 MR. BRAUTIGAM: Your Honor, the  
8 next thing was expert reports. And I spoke to  
9 Mr. Hust about that. He was going to address  
10 that.

11 MR. HUST: Your Honor, I think the  
12 original scheduling order provided plaintiff's  
13 disclosure of expert reports by August 30th or  
14 31st.

15 MR. BURKE: August 30th, I think.

16 MR. HUST: 30th. And then the  
17 defendants' deadline was September 30th. In  
18 the Court's last order there was a reference  
19 that looked like it said that all of the  
20 parties were to produce their expert reports by  
21 August 30. When Mike and I talked, I told him  
22 I just assumed that you did not intend to  
23 change the scheduling order and I was assuming  
24 I still had till September 30th.

1 Tuzun. I wrote Mr. Burke a couple of letters,  
2 you directed that it happened by August 31st,  
3 nothing has happened.

4 MR. BURKE: Well, you subpoenaed  
5 him and you wrote him a letter.

6 MR. BRAUTIGAM: No, I didn't. I  
7 subpoenaed documents.

8 MR. BURKE: Right. And the date  
9 for return of that subpoena is August 30th.  
10 And you said let's set up a deposition shortly  
11 after that, and that's perfectly agreeable.

12 MR. BRAUTIGAM: Okay. Can I have  
13 a date?

14 MR. BURKE: Yes. Mr. Tayfun Tuzun  
15 has left Provident, but yes, we'll get you a  
16 date in early September.

17 MR. BRAUTIGAM: But that's not  
18 consistent with the order.

19 MR. BURKE: But you didn't ask for  
20 the documents until August 30th. Do you want  
21 them sooner now?

22 MR. BRAUTIGAM: I don't believe  
23 that that's accurate. I believe that the  
24 return date for the subpoena is in the late

6 (Pages 18 to 21)

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1 twenties of August.  
 2 MR. BURKE: Okay.  
 3 MR. BRAUTIGAM: And I also asked  
 4 if you would, as a courtesy, produce the  
 5 documents earlier.  
 6 MR. BURKE: Okay.  
 7 MR. BRAUTIGAM: You didn't respond  
 8 to any of these letters.  
 9 MR. BURKE: Well --  
 10 MR. BRAUTIGAM: I'm trying to  
 11 proceed in a manner that's consistent with the  
 12 letter and the spirit of Judge Hogan's order.  
 13 MR. BURKE: We'll try to gather  
 14 the documents we can gather, respond to the  
 15 subpoena hopefully before the date of return of  
 16 the subpoena. We'll make Mr. Tuzun available  
 17 after that.  
 18 MR. BRAUTIGAM: Great. Your  
 19 Honor, there's another issue with respect to  
 20 an agreement or what I thought was an agreement  
 21 that was reached that related to the conduct in  
 22 depositions, particularly with instructions not  
 23 to answer questions. Here's how it unfolds, I  
 24 asked some of the Provident director defendants

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1 certain stage of the trial and then we'll  
 2 consider producing --  
 3 MR. GREER: Well, I think this  
 4 came up during -- first during Mr. Pedoto's  
 5 deposition, who was a Provident director. And  
 6 the issue came up when he was asked what his  
 7 Social Security number was. And being a man of  
 8 some wealth and afraid of identity theft and  
 9 what may happen with it, I offered to Mike  
 10 that, Mike, why don't we just provide that to  
 11 you in letter form. And we are still willing  
 12 to do that, as my letter so indicates.  
 13 Later on in the deposition, there  
 14 was a question about net worth, or some  
 15 financial information. At that time it was  
 16 volunteered that we would also submit that in a  
 17 letter form. And our position simply is, Your  
 18 Honor, that as stated, we will -- we will -- we  
 19 are gathering the Social Security numbers, we  
 20 will get those to Mike as soon as possible.  
 21 As far as the financial  
 22 information is concerned, we will also get that  
 23 to Mike, but it is our position that before  
 24 that is done, there has to be a prima facie

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1 questions that the OHSL director defendants had  
 2 previously answered I believe without  
 3 objection, what's your net worth approximately,  
 4 what's your Social Security number.  
 5 The Provident directors were  
 6 apparently more concerned about this, because  
 7 they said, hey, I'm not going to do this in a  
 8 proceeding like this, you're just going to have  
 9 to go to Court and get that. So I made an  
 10 agreement with Rachel Rowe that I thought Mr.  
 11 Greer had signed off on because he was also  
 12 attending these depositions.  
 13 And it said, look, we'll provide  
 14 you this information confidentially. I said,  
 15 fine. I didn't ask any more questions like  
 16 that. Later I received a letter from Mr. Greer  
 17 where he attempts to, what I would say is,  
 18 impose unilateral conditions that were not part  
 19 of the agreement.  
 20 In other words, the agreement as I  
 21 remember it was, we'll provide that information  
 22 to you later in a confidential manner. And now  
 23 his letter essentially says, you're not  
 24 entitled to that yet, you have to get to a

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1 case of punitive damages, because otherwise it  
 2 couldn't lead to any relative evidence in this  
 3 case.  
 4 And these particular defendants  
 5 and clients don't want to provide that kind of  
 6 financial information until they have to. And  
 7 we've instructed them that they have to once  
 8 there is a prima facie case of punitive  
 9 damages, which would be after all the motions  
 10 are ruled upon, motions to dismiss, all motions  
 11 for summary judgment. If punitive damages are  
 12 going to the jury, that -- that will be  
 13 provided and that's been our position.  
 14 MR. BRAUTIGAM: Your Honor, that's  
 15 substantially different from the position that  
 16 they took at the depositions. And here's the  
 17 problem, I'm shooting at a moving target. If I  
 18 asked for the Social Security numbers and an  
 19 approximation of the net worth and they  
 20 instructed the witness not to answer, fine. I  
 21 can file my motion that that's an improper  
 22 instruction and be done with it. But it seems  
 23 as though this is a bait-and-switch type  
 24 tactic, because we agreed to one thing and then

7 (Pages 22 to 25)



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1 later, not only did they not produce the  
2 information, but they say they're not going to,  
3 they're imposing all of these other conditions.

4 MAGISTRATE JUDGE HOGAN: Right.  
5 This information is now of record. Is this  
6 acceptable to you in letter form, Social  
7 Security numbers and net worth?

8 MR. BRAUTIGAM: Yes, Your Honor,  
9 it's always been acceptable. I understand the  
10 defendants' position that they don't want this  
11 to be part of the public record. And I'm happy  
12 to accommodate them, but at the same time I  
13 want to be able to argue that people like my  
14 clients, one of whom was a roofer, was  
15 defrauded by multimillionaires if that's the  
16 case.

17 MR. GREER: And, I'm sorry, Your  
18 Honor, my position would be that he's entitled  
19 to that if he has the prima facie case when he  
20 goes to trial, and that's the only time he  
21 needs to have that. He's talking about what he  
22 needs to argue to a jury, so I don't understand  
23 how it prejudices the plaintiffs not to get  
24 that information prior to creating a prima

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1 MR. GREER: Once we get through  
2 motion practice.

3 MAGISTRATE JUDGE HOGAN: Okay.

4 MR. GREER: If there's still a  
5 prima facie case at that point in time, we will  
6 provide that financial information and net  
7 worth and what he wants. And he's entitled to  
8 it at that point, but right now we don't  
9 believe he's entitled to it.

10 MR. BRAUTIGAM: But, Your Honor,  
11 I'm harmed because of the moving target aspect  
12 of this. If they wanted to take that position  
13 at the deposition, that was fine, just instruct  
14 the witness not to answer and then I'll do what  
15 I have to do, as you indicated in the prior  
16 order.

17 I don't understand why their  
18 agreement shouldn't be enforced. And if you  
19 want me to submit on this, I'll go back to the  
20 Pedoto and other depositions and I'll find out  
21 where exactly they said it and what exactly  
22 they said. But Mr. Greer's letters are  
23 substantially different from what we agreed to  
24 at the depositions.

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1 facie case.

2 MR. BURKE: And I think, Your  
3 Honor, the law is pretty clear, and if we need  
4 to brief it, we can. That's exactly what the  
5 law requires when there's a prima facie on  
6 punitive damages, that becomes relevant and not  
7 until then.

8 MAGISTRATE JUDGE HOGAN: This has  
9 come up multiple, multiple times in the context  
10 of all sorts of cases where somebody wants  
11 financial information. And I've always --  
12 we've had a consistent pattern here of saying  
13 that until this becomes an issue for the jury,  
14 that that information is confidential.

15 Now, I don't see anything wrong  
16 with your suggestion that this be done -- if I  
17 understand you right, in advance of the jury's  
18 consideration of this as sort of an informal  
19 thing.

20 MR. GREER: I think you  
21 misunderstood, Your Honor. Our position is  
22 that we will provide that to Mike.

23 MAGISTRATE JUDGE HOGAN: If and  
24 when?

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1 MR. GREER: I don't --

2 MR. BURKE: In all fairness, Mike,  
3 I don't believe there was an agreement. I  
4 don't believe anyone focused on the issue  
5 clearly enough. There wasn't really any kind  
6 of consideration of the framework that Jamie is  
7 proposing, which is the proper framework.

8 MR. GREER: The only conversation  
9 you and I had related to Social Security  
10 numbers, and we're still willing to give that  
11 to you now.

12 MR. BRAUTIGAM: I don't believe  
13 that's true at the depositions, but anyway --  
14 Your Honor, how should we proceed?

15 MAGISTRATE JUDGE HOGAN: This is  
16 unproductive, okay? You're not entitled to  
17 that information until it becomes an issue of  
18 fact for the jury. And you've got a  
19 representation on the record that you'll get it  
20 if and when that occurs, so I don't see any  
21 prejudice at all.

22 And I'd rather not get into a  
23 he-said, she-said about what kind of agreement  
24 you had with Rachel Rowe. I'll never know,

8 (Pages 26 to 29)

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1 you'll say one thing, she'll say the other.  
 2 And how am I going to get to the bottom of it  
 3 except by following the law?  
 4 MR. BURKE: In her defense, Miss  
 5 Rowe's position is the same as Mr. Greer's.  
 6 MR. BRAUTIGAM: Well, Your Honor,  
 7 the answer to the question is you get to the  
 8 bottom of it by reading what was said and  
 9 agreed to in the depositions. It's very  
 10 simple.  
 11 MAGISTRATE JUDGE HOGAN: Okay. If  
 12 you think there's something right there on the  
 13 face of the record that I can see, I'm willing  
 14 to look at that.  
 15 MR. BRAUTIGAM: Okay.  
 16 MAGISTRATE JUDGE HOGAN: But I  
 17 don't have it.  
 18 MR. BRAUTIGAM: Okay. Well, this  
 19 just came up. I got Mr. Greer's letter last  
 20 night, so this just came up and I was asking  
 21 for guidance on how to proceed. You've now  
 22 provided that guidance. And Your Honor, also  
 23 I've asked for an update on the health of the  
 24 individual Oak Hills defendants and I haven't

1 MR. BURKE: It's spotty at best.  
 2 MAGISTRATE JUDGE HOGAN: Why?  
 3 MR. BRAUTIGAM: So I can prepare  
 4 my case, Your Honor, and see if I'm going to be  
 5 able to call them live as witnesses or if I'm  
 6 going to have to rely on the deposition  
 7 transcripts or the videotapes.  
 8 MAGISTRATE JUDGE HOGAN: I think  
 9 this is bizarre, Mike. You're obviously not  
 10 entitled to any of that, period. You can't  
 11 support that, you know.  
 12 MR. BRAUTIGAM: I'm not entitled  
 13 to be informed as to the health of the OHSL  
 14 defendants?  
 15 MAGISTRATE JUDGE HOGAN: You sure  
 16 aren't.  
 17 MR. BRAUTIGAM: Why?  
 18 MAGISTRATE JUDGE HOGAN: Why? The  
 19 better question is why are you?  
 20 MR. BRAUTIGAM: So I can prepare  
 21 for trial.  
 22 MAGISTRATE JUDGE HOGAN: No.  
 23 MR. BURKE: I mean, I would  
 24 assume, Mike, that these gentlemen — you're

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1 received that. Can you direct Mr. Burke to  
 2 tell me so I can prepare for trial?  
 3 MR. BURKE: Your Honor, I have  
 4 not — these gentlemen have all been deposed  
 5 two to three days each, most on videotape. I  
 6 mean, all of the discovery of the OHSL  
 7 directors is done. I don't know what  
 8 obligation or even what ability I have to  
 9 continue to say what their health is like.  
 10 I mean, we have a scheduling  
 11 order. These are 80 plus year old men. I  
 12 mean, their health is, you know, what any 85  
 13 year old man is like. It's not getting any  
 14 better. And I just don't know what you want me  
 15 to do, Mike, or even what you plan to do in the  
 16 event somebody is ill.  
 17 MR. BRAUTIGAM: Your Honor, as  
 18 I --  
 19 MR. BURKE: You've deposed them  
 20 all.  
 21 MR. BRAUTIGAM: As I prepare for  
 22 trial as I'm doing, I believe that I'm entitled  
 23 to know generally speaking what the health of  
 24 the OHSL defendants are.

1 probably going to have to use their deposition  
 2 testimony for large parts of the case, you can  
 3 bet on that, because I probably will as well.  
 4 MR. BRAUTIGAM: Well, thank you.  
 5 That's helpful, but if one of them dies, are  
 6 you going to tell me?  
 7 MR. BURKE: Yes. I think you'll  
 8 probably hear about it, there will be a  
 9 notification of death filed with the case,  
 10 because their estate will become a party  
 11 because the gentleman will be gone.  
 12 MR. BRAUTIGAM: Thank you.  
 13 MAGISTRATE JUDGE HOGAN: I  
 14 wouldn't imagine what the doctor is supposed to  
 15 say. The chances of so-and-so dying in the  
 16 next year are 60/40, or some detailed report  
 17 about he's got, you know --  
 18 MR. BURKE: In addition to being  
 19 confidential medical information that people  
 20 aren't allowed to ask.  
 21 MAGISTRATE JUDGE HOGAN: This  
 22 creates a nightmare. And we didn't have much  
 23 luck, if you'll all recall, from the doctor who  
 24 recommended -- or treated one of these fellows

9 (Pages 30 to 33)

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1 before. It was a question of what doctor was  
2 in charge and nobody was particularly helpful.

3 MR. BRAUTIGAM: Your Honor, I just  
4 want the record to be clear, I didn't ask for  
5 anything like doctor's examinations. I simply  
6 wanted a representation as to how their health  
7 is and Mr. Burke has now given me that to some  
8 extent and I'm happy to receive it.

9 MR. BURKE: I will tell you, I  
10 have no firsthand knowledge, Mike, today how  
11 their health is. I can just tell you what  
12 their health was like the last several times  
13 you deposed them. These gentlemen have various  
14 illnesses, as an elderly person frequently  
15 does. And I have no firsthand knowledge about  
16 how they are today, and whether it differs from  
17 how they were the last time you talked to them.

18 MAGISTRATE JUDGE HOGAN: Okay. Go  
19 ahead.

20 MR. BRAUTIGAM: Your Honor, one of  
21 the other things that I want to clarify is the  
22 PWC report with respect to the depositions.  
23 Are you going to rule on that today?

24 MAGISTRATE JUDGE HOGAN: No, I

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1 MR. BRAUTIGAM: Your Honor, to the  
2 extent that it's been gone into in detail,  
3 obviously we didn't have the benefit of the  
4 report. Also, the Oak Hills and Provident  
5 defendants have filed a motion to keep the  
6 report confidential. Will you be deciding  
7 that, Your Honor, or will Judge Beckwith?

8 MR. BURKE: It's a document --

9 MAGISTRATE JUDGE HOGAN: That's a  
10 good question.

11 MR. BURKE: It's a motion related  
12 to the existing protective order, Your Honor.  
13 When we produced the document, we requested  
14 that it be confidential, which means that it be  
15 used for purpose of litigation and no other  
16 purposes.

17 MAGISTRATE JUDGE HOGAN: I would  
18 think that it would be mine, but it's okay with  
19 me if -- I mean, I don't mind asking Judge  
20 Beckwith, as I frequently do, and when things  
21 look like they'd be better managed at one end  
22 or the other, saying I interpret this as for me  
23 to decide, it's not dispositive in form and  
24 substance, but the lawyers have a question on

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1 want to look and see -- your argument, I  
2 assume, is you want more time because of this  
3 report that you got late in the game.

4 MR. BRAUTIGAM: Yes, Your Honor.

5 MAGISTRATE JUDGE HOGAN: And I  
6 want to see if that's the case.

7 MR. BRAUTIGAM: Okay.

8 MR. BURKE: Your Honor, that has  
9 not been moved or briefed or anything. The  
10 only thing I would say about that is the topics  
11 in there deal with the restatement allegations  
12 that were the reason for reopening all the  
13 depositions of these gentlemen again. And if,  
14 if the Court believes that there is something  
15 that requires again deposing all of these  
16 gentlemen over this document, I think we would  
17 like the opportunity to at least alert the  
18 Court to what the record is so far on these  
19 same issues.

20 I mean, the reason why all of  
21 these gentlemen were deposed again was about  
22 the restatement, so this has been gone into in  
23 excruciating detail with the Provident  
24 directors and the OHSI directors.

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1 it and would you rather do it or do you want me  
2 to do it or what.

3 MR. BURKE: I would add, Your  
4 Honor, that that motion has not been fully  
5 briefed either though. We have filed, Mr.  
6 Brautigam has not responded.

7 MR. BRAUTIGAM: Right, Your Honor.  
8 We're particularly concerned about that because  
9 the PWC report, as you'll soon see, is just  
10 inconsistent with the public statements that  
11 Provident has been making. So we're concerned  
12 that Provident is essentially asking the Court  
13 to join in a coverup of this so they can  
14 continue to say we only found out about these  
15 problems in February of 2003 when the report  
16 says that they knew about it years earlier.

17 MR. BURKE: That's an absolutely  
18 false statement and it's gibberish to suggest  
19 that the Court or anyone is involved in a  
20 coverup. That's irresponsible, Mr. Brautigam,  
21 and that's not true.

22 MR. BRAUTIGAM: I didn't suggest  
23 that at all.

24 MAGISTRATE JUDGE HOGAN: It's not

10 (Pages 34 to 37)

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1 necessary for me to get into coverup or not  
2 coverup. The question for me is dispositive or  
3 not. And I'm telling you that such a thing is  
4 nondispositive and therefore would be for me to  
5 decide.

6 However, all right, there are  
7 instances where the district judge has decided  
8 to do things, because I recognize it as having  
9 some impact on the outcome of the case and have  
10 asked them. I mean, it's happened a lot. For  
11 instance, let's take an example that happened a  
12 couple years ago.

13 There was an environmental case  
14 that was pending before Judge Spiegel. And  
15 there was a spoliation argument to be made on  
16 behalf of the plaintiff. And they were  
17 requesting -- plaintiff was requesting an  
18 evidentiary based sanction, all right? Clearly  
19 nondispositive in form.

20 What would be the effect on the  
21 outcome of the case? Dramatic, all right? And  
22 so I thought, let me ask Judge Spiegel what he  
23 thinks, you know. And his suggestion was, you  
24 decide it and make it in the form of an R&R.

1 don't exist?

2 MR. BURKE: Because they obviously  
3 were intending to attach something that they  
4 ended up not attaching. I just confirmed that  
5 with PricewaterhouseCoopers.

6 MR. BRAUTIGAM: That's a far cry  
7 from saying they don't exist.

8 MR. BURKE: They don't -- I don't  
9 have them. They aren't attached to the report.

10 MR. BRAUTIGAM: That's  
11 different --

12 MR. BURKE: I can't produce  
13 something I don't have, Mike. You've got the  
14 report.

15 MR. BRAUTIGAM: That's different,  
16 PricewaterhouseCoopers --

17 MR. BURKE: You can go after  
18 whoever you'd like.

19 MAGISTRATE JUDGE HOGAN: Okay.  
20 That's an issue between you and  
21 Pricewaterhouse.

22 MR. BRAUTIGAM: Well, I just found  
23 out about it now, Your Honor, because on its  
24 face it says there's attachments to the

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1 Which I thought, okay, that makes sense to me.

2 So those are your options, you  
3 know, it seems to me either I decide it, Judge  
4 Beckwith decides it, or she wants me to take a  
5 look at it in the form of an R&R. And I'm  
6 perfectly willing or you're perfectly able to  
7 ask her what is her preference, you know. This  
8 is Judge Beckwith's case, isn't it?

9 MR. BURKE: Yes, Your Honor.

10 MR. BRAUTIGAM: Yes, Your Honor.  
11 Your Honor, either way is fine with us.

12 There's one other point that I wanted to  
13 mention. As you read the report, you'll see  
14 that there's a reference to, I think it's an  
15 Appendix A and an Exhibit B. Now, they haven't  
16 been produced and Mr. Burke --

17 MR. BURKE: They don't exist.

18 MR. BRAUTIGAM: Mr. Burke sent me  
19 a letter saying that he didn't have them.

20 MR. BURKE: They don't exist.

21 MR. BRAUTIGAM: I have trouble

22 accepting that, Your Honor, when they're

23 referenced in the report. Why would

24 PricewaterhouseCoopers reference documents that

1 document.

2 MR. BURKE: No, Mr. Brautigam.  
3 You found out about it when I said what you  
4 have is what I have, there are no attachments  
5 to the original report that was received by  
6 Provident, that we received and produced to  
7 you. There are no attachments.

8 MR. BRAUTIGAM: Jim, attachments  
9 are referenced in the document. That's my  
10 concern.

11 MR. BRAUTIGAM: Your Honor --  
12 MAGISTRATE JUDGE HOGAN: Let's

13 bring this to a close. Your current concern is  
14 between you and PricewaterhouseCoopers, it  
15 doesn't involve Mr. Burke as far as I can see.

16 MR. BRAUTIGAM: Your Honor, I just  
17 learned that.

18 MAGISTRATE JUDGE HOGAN: Okay.

19 MR. BRAUTIGAM: Because I was  
20 going to ask that you direct him to do a search  
21 or something. He's apparently couldn't that,  
22 so I guess --

23 MAGISTRATE JUDGE HOGAN: He's done  
24 it.

11 (Pages 38 to 41)



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1 MR. BRAUTIGAM: It's between  
2 Pricewaterhouse and the plaintiff. Your Honor,  
3 can we get a date to come back before you in a  
4 month to see if we've made any progress for  
5 another status conference?

6 MAGISTRATE JUDGE HOGAN: Is this  
7 productive? I mean, do you guys feel it's a  
8 waste of time or are we getting somewhere?

9 MR. BARRETT: I'd rather not  
10 answer.

11 MR. BRAUTIGAM: Your Honor, I  
12 think it narrows the issues.

13 MR. GREER: I guess my thought,  
14 Your Honor, it's productive when we are able to  
15 resolve certain issues that shortcut any motion  
16 practice. And I think we've done some of that.  
17 There's also issues that I think you've told us  
18 what your decision is going to be. And we're  
19 still going to get motion practice afterwards,  
20 and that doesn't make any sense to me, but --  
21 for example, the whole issue that we talked  
22 about with the financial information and that  
23 sort of thing.

24 I think the Judge has told us what

1 the 31st of August?

2 MAGISTRATE JUDGE HOGAN: She's  
3 getting the calendar. I've got to tell you  
4 something kind of funny. You can put it on or  
5 off. I don't want to put you to the job of  
6 trying to determine that. You remember you  
7 were upset about Pat Fischer's letter that you  
8 thought was calling you names and I thought  
9 this is silliness, it's not of record? Do you  
10 remember that?

11 MR. BRAUTIGAM: You put that in  
12 the order.

13 MAGISTRATE JUDGE HOGAN: Here  
14 comes another case, I'll leave the parties out  
15 of it, but a hotly contested disability claim.  
16 And a request for sanction was made based on a  
17 letter where one lawyer was calling the other  
18 one names.

19 And I'm thinking to myself, I hope  
20 they don't come up with my letter on the  
21 Thiemann case where my order says it's okay,  
22 just call them a name. So I'm in the throes of  
23 a real dilemma now, how to get myself out of  
24 that.

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1 his feelings are on that and what the law is on  
2 it. And you still want to go forward and file  
3 something, which you have a right to do --

4 MR. BRAUTIGAM: I didn't say that.

5 MR. GREER: I thought you did.

6 MR. BRAUTIGAM: No. I said I  
7 would consider my options, or something like  
8 that.

9 MAGISTRATE JUDGE HOGAN: I mean,  
10 if you want to meet again in a month, I'm  
11 perfectly willing to do it. I just don't want  
12 to waste time. If this is productive, that's  
13 fine. It seems to me we got somewhere.

14 MR. BURKE: We're knocking off  
15 some issues.

16 MR. BRAUTIGAM: It's also  
17 productive in that there was a flurry of  
18 activity last night to respond to this. When  
19 people haven't responded to things, they tend  
20 to do so around the time of the conference. I  
21 think it's exceptionally productive.

22 MAGISTRATE JUDGE HOGAN: All  
23 right. Let's do that again.

24 MR. BRAUTIGAM: Could we meet on

1 MR. HUST: I can't remember if the  
2 order specified what name was acceptable.

3 MAGISTRATE JUDGE HOGAN: And the  
4 truth is, these are really good lawyers that I  
5 happen to independently like. I think they're  
6 class A people, but they -- somehow or another,  
7 it's like gas and a match when they get in the  
8 room together. What do we have?

9 COURT CLERK: You have a trial at  
10 the end of August. Last week of August. You  
11 pretty much have the first full week of  
12 September.

13 MAGISTRATE JUDGE HOGAN: Is there  
14 some meaning to those colors?

15 COURT CLERK: Yes, pink is trial.  
16 There is the Weber color coding system.

17 MAGISTRATE JUDGE HOGAN: We're  
18 going along with the color coding system. Pink  
19 is important and yellow means less important?

20 COURT CLERK: Yes. I don't know.  
21 All I know is pink is trial. And you've got  
22 trial every week in September, except for  
23 the -- the 7th is open, the 8th, 9th and 10th.

24 MR. BRAUTIGAM: The 7th would be

12 (Pages 42 to 45)



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1 fine, Your Honor. It's the day after Labor  
 2 Day.  
 3 MAGISTRATE JUDGE HOGAN: Okay. Is  
 4 this time good?  
 5 MR. BURKE: Fine, Your Honor.  
 6 MR. BRAUTIGAM: Fine, Your Honor.  
 7 MR. HUST: Yes, 10:00.  
 8 MR. BARRETT: Do you want us back  
 9 for that, Judge? I don't --  
 10 MAGISTRATE JUDGE HOGAN: Let's put  
 11 it this way, Mike, if there's something of  
 12 interest to you, you can come. If it's not,  
 13 then --  
 14 MR. BARRETT: Okay.  
 15 MAGISTRATE JUDGE HOGAN: I don't  
 16 want to require anyone to be here, so I think  
 17 they're just being put on --  
 18 MR. BARRETT: We'll try to resolve  
 19 our issues.  
 20 MR. BRAUTIGAM: Could you direct  
 21 that the plaintiffs and the defendants get to  
 22 you by August 16th, either in a letter or  
 23 something in writing, what has been fully  
 24 briefed and what is ready for argument because,

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1 helpful. It sort of set the agenda for the  
 2 next conference.  
 3 MR. BARRETT: Judge, could I ask  
 4 that the conference date not be converted into  
 5 an oral argument date?  
 6 MR. BRAUTIGAM: Right, the 7th is  
 7 not oral argument. Your Honor, would you have  
 8 any objection if I sent a letter to the Court  
 9 and also to all counsel for the next status  
 10 conference outlining the agenda?  
 11 MR. BURKE: No, we could have a  
 12 joint letter as we did last time.  
 13 MAGISTRATE JUDGE HOGAN: The thing  
 14 you ought to tell me, this is really a  
 15 peripheral point. When I get unofficial  
 16 filings, they go in the jacket of the case.  
 17 And once in a while something is in there, I  
 18 mean, I've encountered this a couple times  
 19 where there's been in the context of a  
 20 settlement conference, there's been an offer  
 21 made that is supposed to be confidential, it  
 22 comes to me and the directions are, don't --  
 23 this is my last best offer, don't tell the  
 24 other side, you know.

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1 Your Honor, I've been working on this for a  
 2 while and it's exceptionally confusing, and I  
 3 think it would be helpful and help the Court  
 4 and all parties.  
 5 MR. BURKE: Are you directing this  
 6 primarily to motions that the Magistrate Judge  
 7 would address?  
 8 MR. BRAUTIGAM: Yes.  
 9 MR. BURKE: Why don't you go --  
 10 because I think these are of concern to you --  
 11 go through and compile a list of what you think  
 12 is out there and fully briefed, give us your  
 13 list. And like we did after Judge Beckwith  
 14 ruled and said, tell me what's pending, we sort  
 15 of came back and agreed that certain things we  
 16 agreed were pending, certain things we agreed  
 17 were not pending. And if there was any  
 18 disagreement, category three. Maybe we can do  
 19 that again.  
 20 MAGISTRATE JUDGE HOGAN: I think  
 21 you did it with me once and it helped.  
 22 MR. BRAUTIGAM: Right.  
 23 MAGISTRATE JUDGE HOGAN: I believe  
 24 it was your letter and I thought it was

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1 The idea is for the other side to  
 2 do the same and then the Court determine if  
 3 there's any room to talk or this really is it,  
 4 you know, that's kind of how that's come up.  
 5 And I've said to people, okay, I'm perfectly  
 6 willing to do that, but I'm going to keep these  
 7 letters and destroy them, I don't want them in  
 8 the file jacket.  
 9 So if there's anything you send me  
 10 that you don't want there, tell me, otherwise  
 11 it goes there, you know. Nobody looks at it, I  
 12 don't think, because there's nothing on the  
 13 table, but that is a place to put it and that's  
 14 where it goes. And I'm concerned about  
 15 something getting in there that shouldn't be  
 16 there. So tell me if you want me to destroy it  
 17 after the meeting or return it to you or  
 18 whatever. Otherwise it will just find its way  
 19 there. Sometimes that's not a good idea.  
 20  
 21 ---  
 22 (Hearing concluded at 10:35 a.m.)  
 23 ---  
 24

13 (Pages 46 to 49)

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CERTIFICATE

I, Lee Ann Williams, a Notary Public in  
and for the State of Ohio, do hereby certify  
that the foregoing is a true and correct  
transcript of the proceedings in the foregoing  
captioned matter, taken by me at the time and  
place so stated and transcribed from my  
stenographic notes.

My commission expires:

August 26, 2004 Lee Ann Williams, RPR  
Notary Public-State of Ohio

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